

**U.S. Department of Justice**

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SLR:SKJ
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FILED ELECTRONICALLY

Honorable Carol B. Amon
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Kamburowski v. Kidd,
No. CV-05-0953 (CBA) (RLM)

Dear Judge Amon:

In the above-referenced matter, Defendants Michael Kidd and John Carbone write to respectfully request a pre-motion conference on Defendants' proposed motion for summary judgment.

Plaintiffs Michael Kamburowski and Gina Kamburowski bring this action under Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), and New York State law for the allegedly unconstitutional and unlawful arrest and detention of Michael Kamburowski on January 22, 2004. On that date, Plaintiffs appeared at the offices of United States Citizenship and Immigration Services for an interview on Michael Kamburowski's application for adjustment of status based on his marriage to Gina Kamburowski, a United States citizen. Upon discovering that Michael Kamburowski had a final order of removal entered in absentia and an outstanding arrest warrant, he was arrested, processed, and detained. After he posted an immigration bond approximately thirty days later, he was released. Subsequently, Michael Kamburowski successfully moved to reopen his in absentia proceedings and vacate his final removal order.

Insofar as Plaintiffs challenge the lawfulness of Michael Kamburowski's arrest and detention, Defendants intend to argue that the Immigration and Nationality Act ("INA") provides a comprehensive remedial scheme to address such claims. Indeed, Michael Kamburowski availed himself of such remedies and was able to vacate his final removal order. Defendants maintain that the INA's comprehensive statutory scheme precludes Bivens relief in this case.

Further, Defendants intend to argue that 8 U.S.C. § 1252(g) bars Plaintiffs' claims for relief arising from the decision to execute Michael Kamburowski's final removal order. That provision provides that, "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory) . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to . . . execute removal orders against any alien under [the INA]."

Alternatively, Defendants are entitled to qualified immunity. The two-step analysis is: (1) "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right;" and (2) was the right so clearly established that a reasonable government official would have known that his conduct violated a constitutional right "in light of the specific context of the case." Saucier v. Katz, 533 U.S. 194, 201 (2001). First, Kidd's actions were entirely lawful. There can be no dispute that Kidd was authorized to execute removal orders, and at the time he arrested Michael Kamburowski, Kidd was acting pursuant to a valid warrant of removal which ordered him to execute Michael Kamburowski's then-valid final removal order. Moreover, given that Kidd was acting on a valid warrant and final removal order, he had probable cause to arrest Michael Kamburowski. See, e.g., Weyant v. Okst, 101 F.3d 845, 852 (2d Cir. 1996) ("The existence of probable cause to arrest constitutes justification and 'is a complete defense to an action for false arrest,' whether that action is brought under state law or under § 1983.").

Accordingly, Defendants respectfully request a pre-motion conference.

Respectfully submitted,

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